

APR 05 2016

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PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
 HABEAS CORPUS BY A PERSON IN STATE CUSTODY **MATTHEW J. DYKMAN**

|   |   |   |
|---|---|---|
| United States District Court  |   | District: <u>Eddy County Fifth Judicial</u> |
| Name (under which you were convicted):<br><u>JASON CHRISTOPHER MARTINEZ</u>               |   | Docket or Case No.:<br><u>16cv256 RB/GF</u> |
| Place of Confinement:<br><u>Springer, New Mexico Correctional</u>                         | Prisoner No.:<br><u>40623</u>   |   |
| Petitioner (include the name under which you were convicted):<br><u>JASON C. MARTINEZ</u> | Respondent (authorized person having custody of petitioner):<br><u>Eddy County Fifth Judicial District Court</u><br><u>v. JOHN SANCHEZ (WARDEN)</u> |   |
| The Attorney General of the State of:   |   |   |

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Eddy County District Court (CARLSBAD) New Mexico 88220  
Fifth Judicial, Honorable Judge Lisa B. Riley

- (b) Criminal docket or case number (if you know):

CR-2012-186

2. (a) Date of the judgment of conviction (if you know):

JANUARY 28 2014

- (b) Date of sentencing:

AUGUST 27, 2014

3. Length of sentence:

11 1/2 YEARS

4. In this case, were you convicted on more than one count or of more than one crime? ☐ Yes ☒ No

5. Identify all crimes of which you were convicted and sentenced in this case: (Non) Residential Burglary

4th Degree Felony Counts Two: LARCENY over 500.00 4th Degree Felony  
Count Three: Criminal Damage To Property Petty Misdemeanor

6. (a) What was your plea? (Check one)

☒ (1) Not guilty ☐ (3) Nolo contendere (no contest)  
☐ (2) Guilty ☐ (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: Notice of Appeal: IN Court of Appeals

(b) Docket or case number (if you know): No: D-503-CR2012-156

(c) Result: Case was put on Summary Calendar: (Denied)

(d) Date of result (if you know): December 15, 2015

(e) Citation to the case (if you know):

(f) Grounds raised: One: Whether The Court Erred By Permitting The Inclusion of Jurors That The Judge knew personally Two: Whether The Defendant was Denied Effective of Counsel Because Defense Counsel failed to Object in Trial (Jury Pool) Selection And failed to complete obligations, due process. Three: Whether The Defendant was Denied Effective of Counsel By failing to Object Pictures Taken By officer Investigating Brought Muscle T-shirt from Home Submitted in to Evidence Four: Whether Court Erred in Adding Habitual offender Sentence (Consecutively) on a State Jail Felony

(g) Did you seek further review by a higher state court? ☒ Yes ☐ No

TEXAS.

If yes, answer the following:

(1) Name of court: New Mexico State Court of Appeals State Supreme Court

(2) Docket or case number (if you know): Ct. No: 34131 Eddy County: CR 2012-156

(3) Result: Notice of Proposed Summary Disposition (Denied) Affirmance Proposed

(4) Date of result (if you know): February 9, 2015

(5) Citation to the case (if you know):

(6) Grounds raised:

Issue 1 Defendant Argues That District Court Erred By Permitting Persons That The Judge Knew Personally. To Sit As Jurors Issues 2 & 3 Defendant Argues That He Was Denied Effective Assistance of Counsel UN Professional Errors The Results of second Trial Proceedings would Have Been Different. Defendant Also Argues The Taking Photo's Dressed in Muscle T Shirt Supplied By Officer Then Subject To JURORS,

(h) Did you file a petition for certiorari in the United States Supreme Court?

☒ Yes☐ No

If yes, answer the following:

(1) Docket or case number (if you know):

CT; App. 34,151

(2) Result:

(Reversed)

(3) Date of result (if you know):

August 28, 2015

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

☒ Yes☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

Fifth Judicial District Court Eddy County Carlsbad New Mexico 88020

(2) Docket or case number (if you know):

Eddy County No. CR-2012-156

(3) Date of filing (if you know):

February 22, 2015

(4) Nature of the proceeding:

Petition for writ of Habeas Corpus

(5) Grounds raised:

Same AS ABOVE

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes☐ No

(7) Result:

Order Dismissed

(8) Date of result (if you know):

December 10, 2015

(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court: \_\_\_\_\_
- (2) Docket or case number (if you know): \_\_\_\_\_
- (3) Date of filing (if you know): \_\_\_\_\_
- (4) Nature of the proceeding: \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

- (7) Result: \_\_\_\_\_
- (8) Date of result (if you know): \_\_\_\_\_

(c) If you filed any third petition, application, or motion, give the same information:

- (1) Name of court: \_\_\_\_\_
- (2) Docket or case number (if you know): \_\_\_\_\_
- (3) Date of filing (if you know): \_\_\_\_\_
- (4) Nature of the proceeding: \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☒ Yes ☐ No(2) Second petition: ☒ Yes ☐ No(3) Third petition: ☒ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**CAUTION:** To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

**GROUND ONE:** During Second Trial The Judge Was ReBoted to Judicial Standard Committee The Same Judge Allowed Certain Jurors To Sit in She Knew Personally. Trial Attorney Was Not Present

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

ON JANUARY 28, 2014 A Second Trial Began with Attorney James Lowry. He was late. I came in and the Judge Lisa B. Riley was talking and already choosing jurors telling them where to sit and who would be Foreman. During these conversations they spoke of college classes who would show up. She Judge is the local college instructor. Three were ex-police officers I knew in past, one was a victim of a current burglary. I reported the Judge for Bias and unfair linking on other charges I was claimed competent. in one prior Court proceeding, my attorney was late 1 1/2 hour. And I told him of this I told him to exclude 5 jurors He ignored my request. He said it was OK just like the first trial

(b) If you did not exhaust your state remedies on Ground One, explain why: Stated on all steps in the above

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(Rev. 01/15)(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: State Habeas CorpusName and location of the court where the motion or petition was filed: Fifth Judicial District CourtEddy County Carlsbad New Mexico 88020Docket or case number (if you know): CZ-2012-156Date of the court's decision: December 10, 2015

Result (attach a copy of the court's opinion or order, if available):

Attached is a (Denial) of the order of Habeas Corpus

(3) Did you receive a hearing on your motion or petition?

☒ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☒ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

**GROUND TWO:**

Trial Counsel Was Effective in Failing To Ensure A Record Was Made of Interactions Between Trial Judge And Jury Pool That Occurred in Second Trial (January 28, 2014)

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

In The Beginning of Second Trial January 28, 2014 The Defendants Trial Attorney Was 1 1/2 Hours Late And There's Silence in 30 minutes of Records Judge is Speaking of Jury Pool Explaining Rules And Guidelines, This Issue Has Been Brought To Light in Other Remedies Such as Memorandum During The Pre-trial Dates Defendant Opposed Of Alexander Ching Public Defender To Dismiss Him As Counsel The Judge Same in Trial Was Reported To Judicial Standards Committee There Fore Defendant Then Received James Lowry for Trial on December 23, 2013 A Hung Jury (Mistrial) Occurred Then Shortly There After A Second Trial Occurred January 28, 2014 Date of Conviction Mr Lowry Quit And Hired Jared Klunkki for Preparing Sentencing And Docket Statement in This Used Transcripts of Second Trial to Finish Appeal This is Why My Appeal Was Denied Mr Klunkki Was Never Present in Trial, There Fore it Violates My Due Process it Was His First Appeal Ever Made.

**(c) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: HABEAS CORPUS

Name and location of the court where the motion or petition was filed:

Fifth Judicial District Court  
Eddy County Carlsbad New Mexico 88220

Docket or case number (if you know): CR-2012-150

Date of the court's decision: Feb 22, 2014



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Result (attach a copy of the court's opinion or order, if available):

Copy of Dismissal included

- (3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No
- (4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No
- (5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No
- (6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: \_\_\_\_\_

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: \_\_\_\_\_

**GROUND THREE:**

Attorney James Lowry failed to object to submitting pictures as evidence taken by officer who admitted to supplying black muscle t-shirt from home

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Making defendant wear it

On January 28, 2014, Cpl. Swanson of Carlsbad Police Dept. brought a black muscle t-shirt to the County Jail where defendant was held for questioning. He obtained search warrant told defendant to put on muscle t-shirt. The attorney Alexander B. Ching, a public defender, allowed defendant to wear it. (14) pictures were taken. Mr. Swanson then told defendant if he wanted the muscle t-shirt, defendant said no. Cpl. Swanson submitted this shirt that he supplied put it in evidence locker. The District Attorney Davis' Warlee allowed photos to show the jury, who saw photos first. The trial attorney never asked to see photos first before showing them to defendant. Therefore defendant never saw just what the photos were showing. This showing more tattoos of defendant's body. Self-incriminating evidence or not against constitutional rights.



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(b) If you did not exhaust your state remedies on Ground Three, explain why: \_\_\_\_\_

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: HABEAS CORPUS

Name and location of the court where the motion or petition was filed: FIFTH JUDICIAL DISTRICT COURT

Eddy County CARLSBAD New Mexico 88220

Docket or case number (if you know): CR-2012-156

Date of the court's decision: FEB. 22, 2014

Result (attach a copy of the court's opinion or order, if available): ORDER OF DENIAL ATTACHED

(3) Did you receive a hearing on your motion or petition?

☒ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

**GROUND FOUR:** THE use of A TEXAS STATE JAIL FELONY OCCURRED IN (2005) MIDLAND, TX 79701  
 TO ENHANCE HABITUAL OFFENDER TO CONSECUTIVE (4) YEAR ENHANCEMENT TOTALING 11 1/2 YEARS IN CONVICTION  
 JAN 22 2014

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

ON JANUARY 23, 2014 THE COURT SHOULD NOT HAVE ENHANCED HIS SENTENCE BASED ON THE TEXAS STATE JAIL FELONY  
 THAT OCCURRED (2005) MIDLAND TX, THE DEFENDANT SERVED (6) MONTHS IN COUNTY JAIL FOR BORE (1/2) OF BUSINESS  
 THE COURT SHOULD HAVE RAN SENTENCE CONCURRENTLY BECAUSE BORE (1/2) AND (1/2) IS ONE COUNT, ONE DOCKET NO.  
 NOT SEPERATE TO GIVE EXCESSIVE AMOUNT OF TIME ITS SUITABLE FOR CRIME OF 4 DEGREE FELONY OF 18 MONTHS  
 DEFENDANT FEELS HIS 8 AMENDMENT RIGHT WAS VIOLATED CRUEL AND UNUSUAL PUNISHMENT BY  
 ADDING (2) 4 YEAR ENHANCEMENTS CONSECUTIVE SENTENCES CRUEL AND UNUSUAL PUNISHMENT

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?



Yes

☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?



Yes



No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

HABEAS CORPUS

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Name and location of the court where the motion or petition was filed:

Fifth Judicial District  
Eddy County Carlsbad New Mexico 88220

Docket or case number (if you know): CR-2012-156

Date of the court's decision: Feb 22, 2016

Result (attach a copy of the court's opinion or order, if available):

See Attached

(3) Did you receive a hearing on your motion or petition?

☒ Yes☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☒ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

A federal CERTIORARI, Clerk United States  
District Court

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Alexander B. Ching Hobbs New Mexico.

(b) At arraignment and plea: James Lowry Roswell New Mexico 88201

(c) At trial: James Lowry Roswell New Mexico 88201

(d) At sentencing: Jared G Kallunki 500 N. Main Suite 802 Roswell NM 88201  
(505) 208-4469

(e) On appeal: David Henderson Ass. Appellate Defender New Mexico Public Defender  
301 N. Guadalupe Santa Fe New Mexico 87501 (505) 395-2826 ext 10226

(f) In any post-conviction proceeding: \_\_\_\_\_

(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☒ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.



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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

Reverse Current Sentence From 11 1/2 years  
To Time Served OR Run (4) year Habitual Sentence Con/Current for 3 1/2 year.

or any other relief to which petitioner may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 3-24-2016 (month, date, year).

Executed (signed) on 3-24-2016 (date).

Joson C. Martus #40623  
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF EDDY  
STATE OF NEW MEXICO**

**JASON MARTINEZ,**

**Petitioner,**

**vs.**

**STATE OF NEW MEXICO, and  
JOHN SANCHEZ, Warden SCC,**

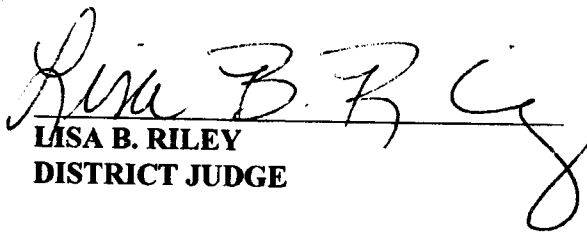
**Respondents.**

**ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS**

**THE ABOVE MATTER** was brought to the attention of the Court on December 10, 2015 by the filing of the Petition for Habeas Corpus.

1. The allegations of the Petition are conclusory and not supported by specific facts.
2. The Petition raises issues which were previously raised on appeal.

The Court being in all things fully advised finds that the Petitioner is not entitled to relief in the Writ for Habeas Corpus as a matter of law and it is hereby dismissed.

  
**LISA B. RILEY  
DISTRICT JUDGE**

FIFTH JUDICIAL  
DISTRICT COURT  
EDDY COUNTY  
FILED IN MY OFFICE

2015 FEB 22 PM 4:40

ERIC ELLIS  
DISTRICT COURT CLERK



STATE OF NEW MEXICO  
JUDICIAL STANDARDS COMMISSION

POST OFFICE BOX 27248  
ALBUQUERQUE, NEW MEXICO 87125-7248  
(505) 222-9353  
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RANDALL D. ROYBAL  
*Executive Director & General Counsel*

PHYLLIS A. DOMINGUEZ  
*Investigative Trial Counsel*

DEBORAH BORIO  
*Investigative Trial Counsel*

February 6, 2014

Jason C. Martinez  
P.O. Box 1388  
Carlsbad, NM 88220

RE: *Inquiry No. 2013-149*

Dear Mr. Martinez:

The Judicial Standards Commission carefully considered your complaint, and after completing an initial inquiry, decided that no action should be taken. Consequently, the complaint was dismissed and the matter was closed.

As we stated in our informational flyer that was mailed to you or was available for download from our website with complaint forms, complaints may be dismissed for any of the following reasons:

- Your allegations concern factual and legal issues that you must address in the court system by motion, appeal or writ, including disputes about the rulings or orders, applications of the law, determinations of fact, decisions about evidence and witness testimony, and matters within a judge's authority and discretion;
- Your allegations are not substantiated by clear and convincing evidence and do not establish violations of the Code of Judicial Conduct or grounds for Commission action;
- Your allegations concern matters that are beyond the Commission's jurisdiction; or
- Your allegations concern someone who is not a currently serving as judge or judicial candidate within our jurisdiction (Supreme Court, District Court, Court of Appeals, Metropolitan Court, Magistrate Court, Municipal Court, and Probate Courts).

The Commission's proceedings, deliberations, reasons for action, and closure of this matter will remain confidential at the Commission pursuant to Article VI, §32 of the New Mexico Constitution. Due to these confidentiality restrictions, we cannot provide you with any further information.

We appreciate the effort you took to bring this matter to our attention and thank you for your patience during these proceedings.

Sincerely,

A handwritten signature in cursive script that reads "Joyce Bustos".  
Joyce Bustos  
Chair

|  |  |  |                               |                              |                             |                |
|--|--|--|-------------------------------|------------------------------|-----------------------------|----------------|
| STATE OF NEW MEXICO<br>SUPPLEMENTAL REPORT                       | ORIGINAL OFFENSE DATE<br><b>04/25/12</b> | SUPP. DATE<br><b>5/17/12</b>                                       | CASE NO.<br><b>P212004422</b> | INC. NO.<br><b>S12001514</b> | PAGE<br><b>1</b>            | OF<br><b>1</b> |
| ORIGINAL OFFENSE REPORTED<br><b>Commercial Burglary</b>          |  | ORIGINAL VICTIM'S NAME (LAST, FIRST, MIDDLE)<br><b>Sutherlands</b> |                               |                              | DATE OF BIRTH<br><b>N/A</b> |                |
| LOCATION OF OCCURRENCE<br><b>2101 S Canal, Carlsbad NM 88220</b> |  |  |                               |                              |                             |                |

On 05/15/2012 I, Cpl Swanson completed a search warrant for Jason Martinez. The search warrant was for photographs of Jason Martinez's tattoos, specifically a skull with wings on his back and a spider web tattoo on his left arm. The warrant was approved and signed by ADA. Romero, with probable cause found. It was issued and signed by District Court Judge Brown.

On 05/17/2012 the warrant was executed at the Eddy County Detention Center, where Jason Martinez was incarcerated. Jason was given a copy of the warrant and I explained that I would be taking photographs of his upper body, specifically, his tattoos. Jason fully complied. A total of 17 photographs of Jason's upper body were taken, which included: Jason wearing a black tank top, supplied by me and photo of his exposed upper body. An inventory/return form was completed and a copy was given to Jason.

The search warrant was returned to the Clerk of Court as "served" along with the inventory/return form. The black tank that Jason wore was placed into an evidence locker at the Carlsbad Police Department.

This is a supplement to my original report.

|                                       |                    |                        |                        |  |                        |   |                        |
|---------------------------------------|--------------------|------------------------|------------------------|--|------------------------|---|------------------------|
| OFFICER (PRINT)<br><b>Swanson, AT</b> | RANK<br><b>Cpl</b> | I.D. NO.<br><b>917</b> | DATE<br><b>5/17/12</b> | DETECTIVE / FOLLOW-UP OFFICER / REFERRED TO  |                        | I.D. NO.                                | DATE                   |
|                                       |                    |                        |                        | PROCESSED BY<br><i>[Signature]</i>   | DATE<br><b>5-18-12</b> | DATA ENTRY PERSON<br><i>[Signature]</i> | DATE<br><b>5-21-12</b> |
|                                       |                    |                        |                        | INVESTIGATOR<br><b>LT.</b>   | I.D. NO.<br><b>98</b>  | DATE<br><b>05-18-12</b>                 |                        |
| OTHER OFFICERS, ETC.)                 |                    |                        |                        | CASES CLEARED BY THIS ARREST<br>CASE NO.      CASE NO.      CASE NO.      CASE NO. |                        |   |                        |

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